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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/720,941	06/08/2001	Rodney Thomas Fox	08291-670001	8400

26211 7590 07/25/2003

FISH & RICHARDSON P.C.  
45 ROCKEFELLER PLAZA, SUITE 2800  
NEW YORK, NY 10111

EXAMINER
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GOLLAMUDI, SHARMILA S

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 07/25/2003

12

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Applicati n N .

09/720,941

Applicant(s)

FOX ET AL.

Examin r

Sharmila S. Gollamudi

Art Unit

1616

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 03 July 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_.

3. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 1-16.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

Continuation of 3. Applicant's reply has overcome the following rejection(s): Rejection of claims 1-4 under 103(a) as being unpatentable over Malcolm (4,541,844) and Malcolm in view of Inculet et al and further in view of Kulkarni.

(see attached)

Applicant argues that WO is concerned with the precipitation of the airborne particles in indoor space and instant invention is concerned with droplets coming out of the aerosol spray. Applicant argues that the preamble and the body must be given weight.

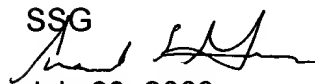
Applicant's arguments have been fully considered but they are not persuasive. The examiner points out that WO teaches imparting instant charge (+/- .0001 C/Kg) to liquid droplets with instant particle size and droplet diameter via the process of spraying thorough an aerosol device. WO teaches the theory of mutual repulsion on page 1, lines 29-30 as seen in instant method. Therefore, it is the examiner's position that WO's invention will inherently perform instant invention's preamble since both the prior art and the instant invention teach a method of imparting the same droplets with the same charge and same particle size/diameter from an aerosol device. Applicant has not provided evidence that WO does not inherently perform the said function. Further, the examiner has taken into account the body of the claim and as clearly seen; the prior art clearly discloses the instant invention's body of the claim. As for the preamble, if the body of the instant claim is the same as the prior art's invention, the prior art will inherently perform the recited preamble. Furthermore, the preamble merely recites "a method of reducing the inhalation of airborne particles" and WO teaches precipitating airborne particles of instant size; therefore by removing particles of instant size from the air, the inhalation of airborne particles will be reduced implicitly.

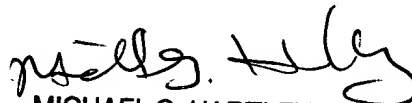
***Correspondence***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharmila S. Gollamudi whose telephone number is (703) 305-2147. The examiner can normally be reached on M-F (7:30-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on 703-308-2927. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3014 for regular communications and (703) 305-3014 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

SSG  
  
July 22, 2003

  
MICHAEL G. HARTLEY  
PRIMARY EXAMINER